



STATE OF MICHIGAN
**Department of
Human
Services**

Memo

Michigan Domestic Violence
Prevention & Treatment Board
235 S. Grand Avenue, Suite 506
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To: Senate Judiciary Committee members
From: Mary Lovik, J.D., on behalf of members of the Michigan Domestic Violence Prevention & Treatment Board
Date: Jan. 17, 2012
RE: SB 845, S-2 substitute (allow use of MCL 769.4a dismissal as prior conviction in certain cases)

The members of the Michigan Domestic Violence Prevention and Treatment Board support SB 845. Currently, courts may dismiss first-time convictions of misdemeanor domestic assault if an offender who pleads or is found guilty successfully completes a term of probation. The dismissed charge does not appear on the offender's public record, and may not be considered in seeking enhanced repeat offender penalties provided under the Penal Code, MCL 750.81 and 750.81a. As introduced, SB 845 would amend the dismissal statute (MCL 769.4a) so that prosecutors could consider a charge that was previously dismissed for purposes of seeking certain enhanced repeat-offender penalties.

For offenders who are motivated to change their violent behavior, Michigan's dismissal statute provides an opportunity to obtain appropriate assistance while under judicial supervision. However, offenders who are not deterred from violence against their partners by past criminal justice interventions pose a serious threat to the safety of victims and the public. Swift, sure sanctions are needed to promote victim safety and offender accountability in cases involving repeat offenders who have continued their violence despite opportunities to change. The Penal Code currently provides three graduated enhanced penalties for repeat domestic assault offenders:

- A person who commits a domestic assault with one prior conviction of a specified violent offense is subject to a maximum 1 year prison term and/or a maximum \$1000 fine. MCL 750.81(3).
- A person who commits a domestic assault with two or more prior convictions of specified offenses is guilty of a felony punishable by a maximum 2 year prison term and/or a maximum \$2500 fine. MCL 750.81(4). This penalty also applies to a person who commits an aggravated domestic assault with one or more prior convictions of a specified violent offense. MCL 750.81a(3).

These repeat offender provisions are currently undermined by the dismissal statute to the extent that previously dismissed charges are not taken into account in determining the number of an offender's previous convictions. Essentially, the dismissal statute provides a "free pass" for the first offense. This "free pass" exposes victims to continued abuse, and sends a message that domestic violence – even repeat domestic violence – will not be taken seriously by the justice system. SB 845 promotes offender accountability and victim safety by allowing prosecutors and courts to consider a larger context of violent acts in imposing consequences on repeat offenders.

In addition to the changes introduced by the S-2 substitute for SB 845, the MDVPTB believes that the bill's intent will be more fully effectuated if the statutes governing drug courts were likewise amended to allow

courts and prosecutors to consider dismissals of domestic violence offenses for purposes of punishing repeat offenders.¹ The Board notes that the current drug court statutes do not permit courts and prosecutors to consider dismissed domestic violence charges for purposes of sentencing repeat offenders in drug court. MCL 600.1076(4)-(6).

¹ That statute provides: (4) Except as provided in subsection (5), the court, with the agreement of the prosecutor and in conformity with the terms and conditions of the memorandum of understanding under section 1062, may discharge and dismiss the proceedings against an individual who meets all of the following criteria:

- (a) The individual has participated in a drug treatment court for the first time.
- (b) The individual has successfully completed the terms and conditions of the drug treatment court program.
- (c) The individual is not required by law to be sentenced to a correctional facility for the crimes to which he or she has pled guilty.
- (d) The individual is not currently charged with and has not pled guilty to a traffic offense.
- (e) The individual has not previously been subject to more than 1 of any of the following:
 - (i) Assignment to the status of youthful trainee under section 11 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11.
 - (ii) The dismissal of criminal proceedings against him or her under section 7411 of the public health code, 1978 PA 368, MCL 333.7411, section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a, section 350a of the Michigan penal code, 1931 PA 328, MCL 750.350a, or section 430 of the Michigan penal code, 1931 PA 328, MCL 750.430.

(5) The court may grant a discharge and dismissal of a domestic violence offense only if all of the following circumstances apply:

- (a) The individual has not previously had proceedings dismissed under section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.
- (b) The domestic violence offense is eligible to be dismissed under section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.
- (c) The individual fulfills the terms and conditions imposed under section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a, and the discharge and dismissal of proceedings are processed and reported under section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.

(6) A discharge and dismissal under subsection (4) shall be without adjudication of guilt or, for a juvenile, without adjudication of responsibility and are not a conviction or a finding of responsibility for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or, for a juvenile, a finding of responsibility. There may only be 1 discharge and dismissal under subsection (4) for an individual. ... All records of the proceedings regarding the participation of the individual in the drug treatment court pursuant to subsection (4) are closed to public inspection, and are exempt from public disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, but shall be open to the courts of this state, another state, or the United States, the department of corrections, law enforcement personnel, and prosecutors only for use in the performance of their duties or to determine whether an employee of the court, department, law enforcement agency, or prosecutor's office has violated his or her conditions of employment or whether an applicant meets criteria for employment with the court, department, law enforcement agency, or prosecutor's office. The records and identifications division of the department of state police shall retain a nonpublic record of an arrest and the discharge and dismissal under this subsection. [Emphasis added.]



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To: Senate Judiciary Committee members
From: Mary Lovik, J.D., on behalf of members of the Michigan Domestic Violence Prevention & Treatment Board
Date: Jan. 17, 2012
RE: SB 846-847, S-2 substitute (increase penalties for repeat domestic assault offenses)

The members of the Michigan Domestic Violence Prevention and Treatment Board support SB 846 and 847. SB 847 would increase the current penalties imposed on some repeat domestic assault offenders. HB 846 would change the sentencing guidelines to conform to the changes introduced by SB 847 and SB 848 (regarding strangulation).

SB 847 would increase the penalties imposed in the Penal Code on offenders who commit:

- A misdemeanor domestic assault, with two or more previous convictions for similar offenses listed in the statute, MCL 750.81(4), and
- Aggravated domestic assault, with one or more previous convictions, MCL 750.81a(3).

The current penalty for these offenders is imprisonment for a maximum of 2 years and/or a maximum \$2500 fine. SB 847 would increase this to a maximum prison term of 5 years and/or a maximum \$5000 fine.

MDVPTB members support these bills because offenders who assault their domestic partners despite past criminal convictions for similar behavior are a serious threat to the safety of victims and the public. Increased penalties may work in many cases a means of homicide prevention. In one study of domestic violence homicides and attempted homicides involving female victims, 70% of women who were killed by their intimate partners had been previously physically abused by them. Of women who survived a homicide attempt, 71% had been physically abused by their partners.¹

Where past justice system sanctions have not been enough to motivate behavior changes, Michigan's current statutory scheme for enhanced repeat offender penalties promotes victim safety by increasing the amount of time that offenders will be imprisoned and have no access to their victims. The increased penalties introduced in SB 847 will strengthen current sanctions to provide greater victim safety and greater offender accountability commensurate with the serious nature of these crimes.

¹ Praxis International, Risk and Lethality Assessment in the Field of Intimate Partner Violence: A Synopsis of Research, available online at http://files.praxisinternational.org/Safety_Eval_Ch_2_Risk_Lethality_Assess.pdf. (Visited 1/13/12).



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To: Senate Judiciary Committee members
From: Mary Lovik, J.D., on behalf of members of the Michigan Domestic Violence Prevention & Treatment Board
Date: Jan. 17, 2012
RE: SB 848, S-2 (Strangulation)

The members of the Michigan Domestic Violence Prevention and Treatment Board support SB 848 as amended by the S-1 substitute. This bill would amend MCL 750.84 to specify that a person who assaults another by strangulation or suffocation is subject to the felony penalties imposed by that statute. MCL 750.84 currently applies to those who assault others with intent to do great bodily harm less than murder.

Strangulation and suffocation are common forms of assault against intimate partners. Recent studies have found that 30-68% of women in abusive relationships have been strangled by their partners at some point in the relationship.¹ Moreover, strangulation is among the most lethal forms of domestic violence. Researchers report that 10% of violent deaths in the U.S. each year are due to strangulation, with 6 female victims to every male.² A study of health risks to women in Chicago found that strangulation was the cause of 17.5% of domestic violence homicides where male offenders killed female victims.³

Not surprisingly, strangulation is a strong predictive risk factor for lethal domestic assaults.⁴ One study found that at least 56.4% of murdered abused women had previously been strangled by their abusers.⁵ Another reported that 87% of incidents of nonfatal strangulation were accompanied by death threats.⁶

¹ See e.g., Carolyn Rebecca Block et al., *The Chicago Women's Health Risk Study: Risk of Serious Injury or Death in Intimate Violence, A Collaborative Research Project* 161 (2000) (56% of participants had been strangled); Holly Johnson, *Risk Factors Associated with Non-Lethal Violence Against Women by Marital Partners*, in *Nat'l Inst. of Just., Trends, Risks, and Interventions in Lethal Violence*, at 158-59 (Carolyn Block & Richard Block eds., 1995) (in a study of more than 12,000 Canadian women, 30% had been strangled by a previous marital partner); Jacquelyn Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results from a Multistate Case Control Study*, 93 *Am. J. Pub. Health* 1089, 1094 (2003) (56.4% of domestic violence victims had been strangled by their partners); Lee Wilbur et al., *Survey Results of Women Who Have Been Strangled While in an Abusive Relationship*, 21 *J. Emergency Med.* 299 (2001) (68% of surveyed victims of intimate partner abuse had been strangled previously).

² NYS OPDV Bulletin, *Strangulation in Domestic Violence and Sexual Assault*, http://www.opdv.ny.gov/public_awareness/bulletins/fall2003/strangulation.html. (Visited 1/12/12.). See also: Funk, M., & Schuppel, J., (2003). *Strangulation injuries*. *Wisconsin Medical Journal*, 102(3), 41-45, and McClane, G.E., Strack, G.B., & Hawley, D. (2001). A review of 300 attempted strangulation cases part II: Clinical evaluation of the surviving victim. *Journal of Emergency Medicine*, 21(3), 311-315.

³ See Carolyn Rebecca Block et al., *supra* n 1, at 132, 241, 251, 267.

⁴ *Id.*, at 285-286.

⁵ Campbell, *supra*, n 1, at 1094.

⁶ Wilbur et al., *supra*, note 1, at 299.

Strangulation victims experience severe pain, unconsciousness, and brain death, caused when the perpetrator blocks the flow of oxygen to and from the brain through the victim's blood vessels or airway. Eleven pounds of pressure placed upon both carotid arteries for ten seconds will cause unconsciousness. After 50 seconds of continuous oxygen deprivation, the victim rarely recovers. By comparison, it takes eight pounds of pressure to pull a trigger on a gun.⁷ Since the line between fatal and nonfatal strangulation is only a matter of a few seconds or a few pounds of pressure, it is easy to see how any instance of strangulation can easily become a homicide.

Strangulation causes injuries ranging from scratches and voice changes to paralysis and death. However, injuries from strangulation are not externally evident in many cases, even when the assault is fatal. It is also common for injuries to first appear some hours or days after an assault, and even then the injuries may not fully reveal the extent of the underlying physical damage. For example, swelling of the neck may be caused by internal bleeding or fractures of the larynx. Seemingly mild breathing problems may be the only indication of serious injuries that can result in death up to thirty-six hours after an assault. Miscarriages may occur hours or days after strangulation has occurred. Additionally, long-term mental health problems such as amnesia, depression, and psychosis can develop due to the loss of oxygen to the brain during strangulation.⁸

Despite the potential for serious or fatal injury from strangulation or suffocation, it is often difficult to successfully prosecute serious charges against perpetrators, because the applicable Michigan felony assault statutes require evidence of circumstances that are absent from or difficult to establish in these cases. For example, the statutes governing assault with intent to commit murder (MCL 750.83) and assault with intent to do great bodily harm less than murder (MCL 750.84) require the prosecutor to prove that the perpetrator intended to commit murder or do great bodily harm. This showing of intent is often difficult in cases involving strangulation or suffocation, in part due to the lack of physical evidence of injury that is discussed above. As a result, strangulation and suffocation are too often prosecuted under the misdemeanor assault statutes (MCL 750.81 and 750.81a). This allows perpetrators to escape accountability for their actions, and leaves their victims at risk of future deadly violence.

The addition of strangulation and suffocation to MCL 750.84 recognizes the reality that these crimes always carry with them the possibility of serious or fatal injury, and allows prosecutors to charge accordingly. It also brings Michigan into line with approximately 30 other states (including California, Minnesota, Nebraska, North Carolina, and Oregon) that have made specific provision for strangulation in their criminal statutes. On behalf of the members of the Michigan Domestic Violence Prevention and Treatment Board, I respectfully request the members of this committee to support SB 848 as an important tool in deterring a brutal form of intimate partner violence that too often results in serious injury or death.

⁷ NYS OPDV Bulletin, *supra*, n 2.

⁸ Gael B. Strack & George McClane, How to Improve Your Investigation and Prosecution of Strangulation Cases 4-6 (David C. James ed., 1999), available at www.ncdsv.org/images/strangulation_article.pdf. (Visited 1/12/12); Dean A. Hawley et al., A Review of 300 Attempted Strangulation Cases Part III: Injuries in Fatal Cases, 21 J. Emergency Med. 317-320 (2001); Lee Wilbur et al., *supra*, n 1, at 298-301 (2001).